

AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings includes changes to Figure 5C, wherein reference numeral 542 has been deleted.

Attachment: Replacement sheet
 Annotated sheet showing changes

REMARKS

Claims 1-50 were pending in this application. No claims have been added or cancelled. Hence, claims 1-50 remain pending in this application.

Claims 1 and 32 were amended to clarify that the patient testing component is configured to allow the patient to administer a hearing related test to himself, the patient testing component causing the patient to interact with the automated hearing test during the hearing related test. Claims 1 and 32 were further amended to include a patient management component configured to progress the patient through the hearing related test, the patient management component issuing a warning to the patient if the patient is not responding, or responding too quickly, during the hearing related test. Support for the amendments may be found throughout the application in general and at least on page 6, lines 22-23 and page 26, lines 18-20, respectively.

Claims 25 and 49 were amended to clarify that the patient management component is further configured to notify a hearing health professional of problems during the hearing related test. Support for the amendment may be found throughout the application in general and at least on page 26, lines 16-18.

The remaining amendments to the claims, as well as the amendments to the specification and drawings, were made in order to correct typographical and/or grammatical errors. Applicant respectfully submits that no new matter was added as a result of these amendments.

Claim Rejections

Claims 1-2, 5-6, 12-21, 27-28, 31-34, 37, and 41-46 were rejected under 35 U.S.C. § 102(b) as being anticipated by US Published Patent Application 2002/0076056 (Pavlakos).

Claims 22-25 and 47-40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pavlakos in view of US Patent 6,168,563 (Brown).

Claims 26 and 49 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pavlakos and Brown in view of US Published Patent Application 2003/0083591 (Edwards).

Claims 7-10 and 38-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pavlakos in view of Edwards.

Claims 3-4, 11, 29-30, 35-36, and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Pavlakos in view of US Published Patent Application 2004/0073135 (Wasden).

Claim 50 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Pavlakos and Brown in view Wasden.

To the extent the rejections may be considered to apply to the claims as amended, these rejections and all grounds on which they are based are hereby respectfully traversed.

Obligation of Assignment to the Same Person

As an initial matter, Applicant respectfully disagrees that Wasden constitutes prior art because Wasden and the present application both claim their earliest priority to U.S. Provisional Application 60/383,303, filed on May 23, 2002.

To the extent Wasden may be considered prior art, it is prior art only under section 102(e). A section 102(e) prior art reference, however, may not be used in a rejection under section 103(a) for an application filed on or after November 29, 1999, if the subject matter of the section 102(e) prior art reference and the invention claimed in the application were subject to an obligation of assignment to the same person at the time the invention was made. *See* 35 U.S.C. § 103(c).

The present application was filed well after November 29, 1999, and was also subject to an obligation of assignment to the same person as Wasden. *See* Assignment Recordations attached in the Appendix. Therefore, Wasden may not be applied to reject the claims of the present application under section 103(a). Accordingly, withdrawal of the rejection against claims 3-4, 11, 29-30, 35-36, 40, and 50 is respectfully requested.

Arguments in Support of the Claims

As for the remaining claims, amended independent claims 1 and 32 are directed to a multimedia user interface for a computer-based automated hearing test. These claims recite, among other things, a patient testing component that is configured to **allow the patient to self-administer a hearing related test**. An advantage of the claimed invention over the prior art is that patients may conduct their own hearing related test without the aid of a hearing health professional. Thus, the patient may proceed with the hearing related test at a pace that is comfortable to him. In addition, more people will obtain hearing tests because they are likely to be less expensive, and will do so more frequently because they will be more convenient (by virtue of not having to wait for a hearing health professional). Furthermore, the multimedia user interface of the claimed invention provides a thorough test that includes most or all of the hearing related indicators necessary to make an accurate assessment of the patient's hearing.

Nowhere does Pavlakos disclose or suggest the patient testing component that **allows a patient to self-administer a hearing related test**. On the contrary, Pavlakos states in paragraph [0004] that the current practice is for a company to employ an independent audiologist to conduct hearing tests upon its employees. Nowhere does Pavlakos disclose or suggest that this practice has changed or is otherwise eliminated by Pavlakos' invention. Pavlakos merely provides a system to more accurately track transient employees and their hearing history. *See* Pavlakos, paragraph [0007]. Pavlakos' system, however, still requires an independent audiologist to conduct the hearing tests.

The above position is supported by the disclosure in Pavlakos that the audiologist has to provide a verified signature to the employee. Pavlakos describes an Internet-based audiometric testing system that includes a client CPU 12 having hearing testing equipment 14 connected thereto. *See* Pavlakos, paragraph [0026]. Pavlakos states that the hearing testing equipment 14 produces tones to which an employee responds via a keyboard, touchscreen, or other response producing device. *Id.* Pavlakos does not state, however, that the employee can conduct his own hearing tests. On the contrary, Pavlakos discloses that a person certified in audiometric testing must review the test results and provide an analysis to the employee along with a verified signature. *See* Pavlakos, paragraph [0028].

To the extent the Examiner may feel Pavlakos' disclosure of a self-administered hearing tests is inherent, Applicant notes that a rejection under the principle of inherency requires that the inherent characteristic necessarily flow from the teachings of the prior art. *See* MPEP 2112. In the present case, no disclosure in Pavlakos requires or necessitates that Pavlakos' hearing tests be self-administered. On the contrary, it is quite possible and perhaps even likely that the audiologist controls when the hearing testing equipment 14 will produce the tones and which tones are produced. This position is supported by Figures 5a-c of Pavlakos, where a number of fields are shown (e.g., Technician No., Certification No., Audiological Comments, etc.) that only the audiologist can fill in.

The Examiner contends on page 4 of the Office Action that Pavlakos' disclosure of certain screens of the system being designed to be "edit accessible by the operator" means that the report can be changed from a one-chart format to a two-chart format and vice versa. Applicant respectfully disagrees. Nowhere does Pavlakos disclose a report having even a one-chart format, much less a two-chart format, much less toggling between a one-chart format and a two-chart format.

The Examiner alleges on page 5 of the Office Action that the "HINT" lines in Figures 2-4a and 5a-7 illustrate a patient training component. Applicant disagrees and respectfully submits that Figures 2-4a and 5a-7 are actually screens seen by the audiologist, not the patient. Figure 3, for example, displays all of the patient's private information, including first and last names, social security number, date of birth, and so forth. It is very unlikely that an employee would be allowed to see this screen, since he would then be able to select anybody's name and have access to all their private information.

Nevertheless, in order to expedite prosecution of this application Applicant has further amended the independent claims to recite **a reporting component configured to present a result of the patient's hearing related test in a graphical format, the result including data from the patient information component and the patient testing component that are relevant for a hearing health professional to be able to assess the patient's hearing.** Nowhere does Pavlakos disclose or suggest a reporting component configured to present the result of the patient's hearing related test in a graphical format.

As for Brown, this reference merely discloses a remote health monitoring and maintenance system for remotely managing a patient's health. *See Brown, Abstract.* Nowhere does Brown disclose or suggest the patient testing component or the reporting component recited in the claimed invention.

Likewise, nowhere does Edwards disclose or suggest the patient testing component or the reporting component of the claimed invention. Edwards merely discloses a remotely administered hearing test that may be conducted over the Internet. *See Edwards, Abstract.*

Accordingly, because neither Pavlakos, Brown, nor Edwards, nor any other art of record, taken alone or in combination, discloses or suggests the claimed invention, withdrawal of the rejection against independent claims 1 and 32 is respectfully requested.

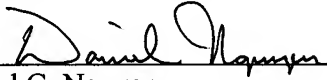
As for dependent claims 2-31 and 33-49, although they may recite independently allowable subject matter, these claims depend from independent claims 1 and 32, respectively, and are therefore allowable for at least the same reasons.

CONCLUSION

In view of the above amendment, applicant believes the pending application is in condition for allowance. The Examiner is respectfully requested to pass this application to issuance.

Dated: July 22, 2005

Respectfully submitted,

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Attachments



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DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

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DOC DATE: 03/08/2004

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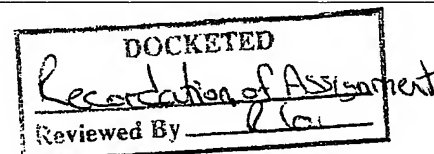
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FILING DATE: 09/16/2003

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TITLE: USER INTERFACE FOR AUTOMATED DIAGNOSTIC HEARING TEST



015221/0065 PAGE 2

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TITLE: APPARATUS FOR BONE CONDUCTION THRESHOLD HEARING TEST

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ANNOTATED SHEET

Otogram Configuration

Input Screen | Paging Encoder Interface | **Paging Options** | Machine Options | Reporting Options | Network Options | Test Options

534 **532**

☒ Page Administrator at end of testing session

☐ Page Administrator at end of each test

☒ Page Administrator after inactivity threshold

536

☒ Page Administrator after inability to reach pure tone threshold

538

540

Paging Device: **IRIG**

Network Paging Drop: **X**

Page Format (ZNI Patient Name, ZT-Test Name):

ZN's Otogram is completed.

ZN has completed the ZT test

ZN is not progressing through the ZT test

Inactivity Threshold (in seconds) **120**

ZN is not progressing through the ZT test

Inability Threshold (in seconds) **360**

539

Save and Exit Exit

↑
530

FIG. 5C